



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201332016

MAY 14 2013

Uniform Issue List: 408.03-00

XXX  
XXX  
XXX

T:EP:RA:T2

Legend:

Taxpayer A:	XXX
IRA X:	XXX
Amount 1:	XXX
Financial Institution A:	XXX
State P:	XXX
State Q:	XXX

Dear XXX:

This letter is in response to your ruling request dated April 24, 2012, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A took a distribution of Amount 1 from IRA X, held by Financial Institution A, on October 18, 20 . Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code of Amount 1 from IRA X was due to his inability to sell his primary residence in a bad real estate market.

Taxpayer A represents that he took the distribution of Amount 1 from IRA X on October 18, 20 , five days after his employer communicated that it might relocate his job from State P to another state that had not yet been determined. Taxpayer A asserts that he was afraid that he would lose his job and be unable to pay the mortgage on his primary

residence in State P. Taxpayer A also asserts that he was afraid that if he kept his job, he would be unable to both pay for his mortgage of his primary residence in State P and for living expenses in another state. Taxpayer A used the distribution of Amount 1 to pay off the mortgage on his primary residence in State P. Taxpayer A intended to use the proceeds from the sale of his primary residence in State P to return Amount 1 to IRA X. However, Taxpayer A was unable to sell his primary residence in State P during the 60-day rollover period because of a bad real estate market. Further, Taxpayer A did not learn that his job transferred to State Q until January 11, 20 ..

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The Service has the authority to waive the 60-day rollover requirement for a distribution from an IRA where the individual failed to complete a rollover to another IRA within the 60-day rollover period but was prevented from doing so because of one of the factors enumerated in Rev. Proc. 2003-16, for example, errors committed by a financial institution, death, hospitalization, postal error, incarceration, and/or disability. Taxpayer A understood that the distributions from IRA X were taxable. Further, Taxpayer A was aware of the 60-day rollover period. Taxpayer A wanted to replenish IRA X with proceeds from the sale of his primary residence in State P. Although Taxpayer A's employer informed him on October 13, 20 , that his job might be relocated, it did not inform him of a decision regarding the relocation of his job to State Q until January 11, 20 . Taxpayer A has not presented evidence to the Service sufficient to establish how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely rollover the distribution of Amount 1 of IRA X into another IRA. When Taxpayer A used Amount 1 to pay off the balance of his mortgage on his principal residence in State P, he assumed the risk that Amount 1 might not be recouped from its sale prior to the expiration of the 60-day rollover period.

Under the circumstances presented in this case, the Service hereby declines to waive the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA X.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact XXX at XXX or by fax at XXX.  
Please address all correspondence to SE:T:EP:RA:T2.

Sincerely,



Jason Levine, Acting Manager  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose